IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.975 OF 2006

Shri Umesh Pandurang Pashuram
and anr. ....Applicants.

V/s

The State of Maharashtra
Jaysingpur Police Station,
District: Kolhapur .....Respondent.

Mr. Amit Sale for the applicants.
Ms. S.V. Gajre, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 20th March, 2006

P.C.:

1. Heard the learned Counsel for the applicants and the learned APP for the State.

2. The applicants were arrested in connection with C.R. No.89 of 2005 registered at Jaysingpur Police Station for the offence punishable under sections 302, 147, 148, 149, 326, 324 and 502 of the Indian Penal Code.

3. The prosecution case is that the deceased alongwith his friend had gone to Hotel Saptagiri which is situated on Sangli-Kolhapur Road and had consumed 17 bottles of beers and also had snacks. Thereafter, the deceased abused the Manager of the Hotel and the

present applicants who were working as waiters in the said Hotel. It is alleged that in the said altercation which was followed the present applicants assaulted the deceased with fist and kick blows and others assaulted him with steel cover of tank, frying-pan and wooden batten. The deceased succumbed to the injuries.

4. The post-mortem notes indicate that the death was caused due to head injury which was caused by hard and blunt weapon. According to the eye witnesses, the present applicants have given fist and kick blows to the deceased. Since the role attributed to the present applicants is that they had given fist and kick blows and, according to the doctor who has performed the post-mortem, the cause of death is due to injury on the head, prima facie, in my view, the applicants cannot be said to have committed the offence punishable under section 302 of the Indian Penal Code and, in all probabilities, the said offence may fall under the provisions of section 304 Part-I and II of the Indian Penal Code.

5. Under these circumstances, the applicants be released on bail in the sum of Rs 5000/- each with one or two sureties in the like amount each. They shall

report to Jaisingpur Police Station once in a month. They shall not tamper with the evidence or threaten any of the witnesses. If they tamper with the evidence or threaten any of the witnesses, liberty is given to the Public Prosecutor to apply for cancellation of the bail.

6. It is clarified that the trial court shall not be influenced by any observations made by this Court while passing this order and it may not be construed to mean as an expression of opinion on the merits of the case and decide the case on its own merits and in accordance with law.

7. Application is accordingly disposed of.

V.M. KANADE, J.